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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

JANET CHECK, Plaintiff and Appellant, v. RALEY'S, Defendant and Respondent.	A153906 (Sonoma County Super. Ct. No. SCV259086)

Janet Check appeals from an order awarding her some, but not all, of the attorney fees she sought after successfully suing respondent Raley's, her employer, under the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).[1] She argues that the trial court abused its discretion in declining to award her all of the fees she sought. We disagree and affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Check sued Raley's alleging that her employer treated her unlawfully after she had back surgery. In her five causes of action, she claimed that Raley's violated the California Family Rights Act (CFRA) (§ 12945.2) by retaliating against her for taking family and medical leave, and violated the FEHA by discriminating against her on the basis of a disability; not providing a reasonable accommodation; failing to prevent

[1] All subsequent statutory references are to the Government Code.

discrimination, harassment, and retaliation; and declining to participate in the good-faith interactive process.

A jury rejected her claim based on retaliation under the CFRA and her demand for "punitive damages on all causes of action," but it found in favor of her on her four claims under the FEHA. It awarded her a total of $119,211, which was composed of $49,211 in economic damages and $70,000 in noneconomic damages. Raley's apparently did not appeal, we have never considered the merits of the judgment, and they are not currently before us.

On appeal the parties agree, as they did below, that Check is entitled to an award of reasonable attorney fees. They disagree, however, on what amount is reasonable. In her motion seeking fees in the trial court, Check sought a total of $1,109,107. This figure was calculated based on her attorneys having billed 1,689.3 hours through trial and 116.2 hours after trial, hourly rates ranging from $700 to $275 per hour, and a multiplier of 1.2 for the attorneys' pre-trial efforts. Raley's opposed the motion, arguing that the number of hours and the rates were inflated and that a multiplier was not justified.

A hearing on the motion was held on December 13, 2017, and a written order followed. The trial court found that both the number of hours and the hourly rates were unreasonably high. Accordingly, it reduced the number of hours by 20 percent, and it reduced the amount of the hourly rates by substituting a range of rates with the highest of $400 per hour for the most experienced attorney, and the lowest of $135 for law clerks. In addition, the court ruled that the "the circumstances of this case do not warrant a multiplier." Based on these rulings, the court entered a final award of attorney fees in the amount of $449,602.

II.
DISCUSSION

A. The Governing Legal Standards.

Parties in litigation are normally required to bear their own attorney fees under what is known as the "American rule." (See *Musaelian v. Adams* (2009) 45 Cal.4th 512, 516.) An exception to this rule applies when a statute authorizes attorney fees to be

awarded to the prevailing party. This exception is referred to as "fee-shifting" because such a statute shifts responsibility for paying the fees to the wrongdoer. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.) Fee-shifting statutes usually further a socially desirable policy, such as encouraging the enforcement of certain laws by parties who have comparatively fewer resources. (*Turner v. Association of American Medical Colleges* (2011) 193 Cal.App.4th 1047, 1060.) The FEHA contains a fee-shifting provision. (§ 12965, subd. (b) [trial court "in its discretion, may award to the prevailing party . . . reasonable attorney's fees and costs."].)

Requests for attorney fees under fee-shifting statutes are typically measured under the lodestar method. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 (*Ketchum*).) Under this method, the trial court calculates a lodestar by multiplying the hours counsel reasonably expended by reasonable hourly rates. (*Id.* at pp. 1131-32.) " 'Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative "multiplier" to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.' " (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 489.) The "court is not *required* to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case; moreover, the party seeking a fee enhancement bears the burden of proof." (*Ketchum*, at p. 1138.)

In determining the lodestar, the trial court need not identify which specific fees or hours it is allowing or disallowing. The court " 'has no sua sponte duty to make specific factual findings explaining its calculation of the fee award and the appellate courts will infer all findings exist to support the trial court's determination.' " (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1250.) Similarly, the court is not obligated to identify each item it finds to be unreasonable because " ' "[w]e do not want 'a [trial] court, in setting an attorney's fee, [to] become enmeshed in a meticulous analysis of every detailed facet of the professional representation. It . . . is not our intention that the inquiry into the adequacy of the fee assume massive proportions,

perhaps dwarfing the case in chief.' " ' " (*PLCM Group, Inc. v. Drexle*r (2000) 22 Cal.4th 1084, 1098 (*PLCM*).)

"An order granting an award of attorney fees is generally reviewed for abuse of discretion. [Citations.] In particular, '[w]ith respect to the *amount* of fees awarded, there is no question our review must be highly deferential to the views of the trial court.' ([Citation]; see [*PLCM*, *supra*, 22 Cal.4th at p. 1095] [recognizing trial court's broad discretion in determining amount of reasonable attorney fees because experienced trial judge is in the best position to decide value of professional services rendered in court]; *Ketchum*[, *supra*, 24 Cal.4th at p. 1132] [same].) 'An appellate court will interfere with the trial court's determination of the amount of reasonable attorney fees only where there has been a manifest abuse of discretion.' " (*Concepcion v. Amscan Holdings, Inc*. (2014) 223 Cal.App.4th 1309, 1319-1320.) A trial court's resolution of factual issues related to a fees request must be affirmed if it is supported by substantial evidence. A ruling on a fees request "will only be disturbed when there is no substantial evidence to support the trial court's findings or when there has been a miscarriage of justice. If the trial court has made no findings, the reviewing court will infer all findings necessary to support the [ruling] and then examine the record to see if the findings are based on substantial evidence." (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 545.)

B. The Trial Court Properly Exercised Its Discretion in Reducing the Requested Hourly Rates.

Check first argues that the trial court abused its discretion by reducing the requested hourly rates. We are not persuaded.

The trial court found that the "rates sought by [Check's] counsel are excessive for Sonoma County." The court believed Check's counsel was "charging San Francisco, Oakland fees, and [it declined] to authorize them in [Sonoma] county." In the court's words, "When you come to Sonoma County, you're gonna be compensated at Sonoma County rates, at least in my court." To bring the rates in line with local rates, the court reduced them on a sliding scale, with an upper limit of $400 per hour for Check's most

senior attorney, and $135 per hour for Check's law clerks. In doing so, the court stated, "[F]rankly, I'm giving you a higher — higher hourly rate than I've ever given anyone."

We discern no abuse of discretion. "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM, supra*, 22 Cal.4th at p. 1095.) As we have said, the law recognizes that an experienced trial judge is in the best position to decide the value of professional services rendered. (*Ibid.*) Here, the court stated that it was "not aware of attorneys in Sonoma County charging more than $400," and it found that the rates it awarded "are in line with [the] rates for Sonoma County attorneys who practice in this Court." This finding was supported by the court's own "experience in the county and declarations that have been filed in many cases regarding filing for attorney's fees." (See *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009 ["court may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate"].) The finding was also supported by other evidence, including evidence that Raley's attorneys were defending the case at a rate of "approximately half of what [Check's] counsel billed," and evidence that Anderson Zeigler, a "prestigious" Santa Rosa law firm, charged attorney rates ranging from $225 to $400 per hour.

Check argues that the trial court erred in determining that the hourly rates for attorneys are different in Sonoma County than they are in the San Francisco Bay Area. Although she concedes that this "determination was within the discretion of the trial court," she argues that the court erred because it failed to consider "whether defining the 'community' as the Bay Area would effectuate the purposes of the FEHA in a manner that limiting the community to Sonoma County would not." But she provides no authority, and we are aware of none, holding that a trial court must examine different locality rates to determine which ones might better effectuate the purposes of a fee-shifting statute. (See *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 72 [the starting point to determine the "reasonable hourly rate" is the market rate in the community where the court is located].) In any event, the court here specifically found that its award was "full and reasonable and in furtherance of the purposes of the FEHA." There was no error.

Check also argues on appeal, as she argued below, that she should have been awarded the higher requested rates because there was "no showing that [Check] could've found a lawyer in this community at the [court's approved] rate." We recognize that a trial court may consider awarding out-of-town counsel higher rates when a sufficient showing is made that hiring local counsel would have been impractical. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399.) But it was Check's burden to prove that she had difficulty finding a local attorney or at least had made "a good-faith effort" to find one. (See *id.* at pp. 398-399.) It was not Raley's burden to prove the reverse. While Check presented evidence that plaintiffs in circumstances similar to hers generally have difficulty finding attorneys to represent them in this type of a case, the court was not obligated to conclude that this satisfied Check's burden, especially since Check presented no evidence that she had tried to find a local attorney and since the court, again relying on its own experience, was aware that "these cases are filed all the time in Sonoma County by local lawyers," some of which the court itself had presided over.

C. The Trial Court Properly Exercised Its Discretion in Reducing the Requested Number of Hours.

Check next argues that the trial court abused its discretion by reducing the requested number of compensable hours by 20 percent. Again, we are not persuaded.

At the hearing, the court stated that Check's counsel "overprepared the case. This [was] a fairly small case on a limited issue. . . . I think the hours that [counsel listed] for each of the various things that were done in the case are excessive." Although the court recognized that Check's counsel had done a "great job," it described counsels' litigation effort as having been like using "a 4-by-4 instead of a fly swatter in terms of the substance of the case." The court believed that reducing the number of hours by as much as 50 percent would have been justified, but it exercised its discretion by reducing them by only 20 percent. According to the court, the number of hours it approved "amply and well compensated" Check's counsel. In its written order, the court elaborated that the

number of hours that had been requested were "excessive for the reasons identified in Raley's opposition brief."

These reasons, which were supported by evidence and elaborated upon, included that Check's counsel spent excessive or unnecessary time drafting, editing, and reviewing certain documents; preparing for and participating in certain depositions; participating in a mediation session; employing certain litigation tactics; and engaging in activities surrounding the trial. Check's counsel sometimes duplicated efforts by assigning two attorneys, often both partners, to perform tasks, such as participating in depositions. As the court remarked at the hearing, "[s]ending two attorneys to depositions in a case like this. I think, is — overdoing it. I think the hours that you list for each of the various things that were done in the case are excessive."[2] And Check's counsel billed far more hours than did Raley's counsel for comparable activities.

We cannot conclude on this record that the trial court abused its discretion in reducing the number of compensable hours by 20 percent. Requiring that hours be reasonably necessary to the litigation is consistent with the requirements for a fee award under the FEHA. (§12965, subd. (b).) "A reduced award might be fully justified by a general observation that an attorney overlitigated a case or submitted a padded bill or that the opposing party has stated valid objections." (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 101.)

In light of the trial court's findings, which were supported by substantial evidence, we cannot conclude that the court abused its discretion in reducing the requested number of hours.

[2] This tendency to overlitigate continued in this court, where Check filed a 66-page opening brief in an appeal where the issues to be decided are narrow.

D. The Trial Court Properly Exercised Its Discretion in Denying the Multiplier.

Finally, we reject Check's argument that the trial court abused its discretion by failing to award a multiplier.

As we have mentioned, the trial court had discretion to award a positive or negative multiplier to the lodestar amount depending on a variety of other factors, "including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Laffitte v. Robert Half Internat. Inc.*, *supra*, 1 Cal.5th at p. 489.) But a "court is not *required* to include a fee enhancement to the basic lodestar figure . . . , although it retains discretion to do so in the appropriate case." (*Ketchum*, *supra*, 24 Cal.4th at p. 1138.) The purpose of the multiplier is to fix a fee at the fair market value for the particular action if the "unadorned lodestar" fails to do so. (*Id*. at p. 1132.)

The record here shows that the trial court understood the relevant factors in declining to award a multiplier. To begin with, it found that the issues were neither novel nor complex. It stated, "I don't find this case to be extraordinary," it was "a fairly small case on a limited issue," and the case "was not a case of monumental proportion," which "the jury verdict reflected." Again, while the court commended the litigation efforts by Check's counsel, it described those effort as having been like using "a 4-by-4 instead of a fly swatter in terms of the substance of the case." It found that Check's counsel had "overprepared the case," and it concluded that the fees request was excessive. Courts "need not consider a multiplier when presented with an inflated, unreasonable fee request." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1329.)

The trial court also properly considered the results obtained. It rejected Check's counsel's argument that "the amount of the verdict by the plaintiff is not to be considered in determining the fees," and instead found that "[t]he [degree of success] is to be considered." We agree that considering the degree of success is a legitimate factor that a court may consider in determining an award of reasonable attorney fees. (*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1398.) As we have mentioned,

although the jury here awarded Check $119,211, it rejected her demand for "punitive damages on all causes of action." (See, e.g., *Loggins v. Delo* (8th Cir. 1993) 999 F.2d 364, 369 ["we believe that 'limited success' may encompass the situation where, as here, a plaintiff requests both compensatory and punitive damages, but recovers only compensatory damages"].) And although Check's counsel had accepted the case on a contingency basis and "took a risk on it," a "trial court is not *required* to include a fee enhancement to the basic lodestar figure for contingent risk." (*Ketchum*, *supra*, 24 Cal.4th at p. 1138.)

We cannot say on the record before us and in light of the governing legal principles that the trial court's ultimate determination that its lodestar amount was "full and reasonable and in furtherance of the purposes of the FEHA" constituted an abuse of discretion.

III.
DISPOSITION

The trial court's order filed on January 24, 2018, is affirmed.

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Humes, P.J.

We concur:

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Banke, J.

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Sanchez, J.